

CERTIFICATION OF CITY CLERK

ORDINANCE NO. 295

I, Mary Lavelle, City Clerk of the City of Milpitas, do hereby certify that the attached Ordinance is a true and correct copy of Ordinance No. 295 of the City of Milpitas, that this Ordinance was duly enacted and adopted by the City Council of the City of Milpitas at a meeting of the City Council held on the 20th of March, 2018 and that the Ordinance was published in the local newspaper and posted in the manner required by law.

WITNESS my hand and the Official Seal of the City of Milpitas, California, this 27th day of March, 2018.

A handwritten signature in cursive script that reads "Mary Lavelle". The signature is written in dark ink and is positioned above the printed name and title.

Mary Lavelle
Milpitas City Clerk

REGULAR

NUMBER: 295

TITLE: AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MILPITAS AMENDING SECTIONS III-1-7.01, III-1-8.01, III-1-10.04 AND III-1-14.01 OF CHAPTER 1 OF TITLE III OF THE MILPITAS MUNICIPAL CODE RELATING TO DENIAL, SUSPENSION OR REVOCATION OF CITY BUSINESS LICENSES FOR WAGE THEFT AND OTHER VIOLATIONS OF LAW AND UPDATING ADMINISTRATIVE APPEAL AND HEARING PROCEDURES FOR BUSINESS LICENSES

HISTORY: This Ordinance was introduced (first reading) by the City Council at its meeting of March 6, 2018, upon motion by Vice Mayor Grilli, and was adopted (second reading) by the City Council at its meeting of March 20, 2018 upon motion by Vice Mayor Grilli. The Ordinance was duly passed and ordered published in accordance with law by the following vote:

AYES: (5) Mayor Tran, Vice Mayor Grilli, Councilmembers Barbadillo, Nuñez and Phan

NOES: (0) None

ABSENT: (0) None

ABSTAIN: (0) None

ATTEST:



Mary Lavelle, City Clerk

APPROVED:



Rich Tran, Mayor

APPROVED AS TO FORM:



Christopher J. Diaz, City Attorney

RECITALS AND FINDINGS:

WHEREAS, wage theft occurs when employees are not paid the wages they are owed by their employers; and

WHEREAS, wage theft can be the failure to pay overtime, minimum wage violations, employee misclassification, illegal deductions in pay, working off the clock, or not being paid at all; and

WHEREAS, local and national studies on wage theft report that wage theft is a pervasive and chronic problem and workers often struggle to collect on the wage theft judgments they are awarded; and

WHEREAS, the City of Milpitas has a commitment and responsibility to ensuring that the employers pay workers the wages to which they are legally entitled; and

WHEREAS, the Milpitas Municipal Code currently authorizes suspension or revocation of a City business license for violations of State and local law; and

WHEREAS, established wage theft by an employer is a violation of State and local law; and

WHEREAS, pursuant to the authority set forth in California Labor Code Section 1205(b), this Ordinance is intended to provide that the City may deny, suspend or revoke City business licenses for established and unsatisfied wage theft violations, as well as for other violations of State and local law; and

WHEREAS, this Ordinance is also intended to update the administrative procedures for reviewing and appealing a denial, suspension and revocation of a local business license.

NOW, THEREFORE, the City Council of the City of Milpitas does ordain as follows:

SECTION 1. RECORD AND BASIS FOR ACTION

The City Council has duly considered the full record before it, which may include but is not limited to such things as the City staff report, testimony by staff and the public, and other materials and evidence submitted or provided to the City Council. Furthermore, the recitals set forth above are found to be true and correct and are incorporated herein by reference.

SECTION 2. AMENDMENT OF MILPITAS MUNICIPAL CODE

The City hereby amends Section III-1-7.01 of Section 7 of Chapter 1 of Title III of the Municipal Code, to read as follows:

CHAPTER 1 – BUSINESS LICENSES

Section 7 – Application – Issuance or Denial

III-1-7.01 - Contents of License

(a) Every person required to have a license under the provisions of this Chapter shall make application for the same to the license tax collector of the City of Milpitas and the City shall evaluate the application for compliance with this Chapter.

(b) Subject to review and appeal pursuant to Sections III-1-10.04 and III-1-14.01 of this Chapter, the license tax collector may deny issuance of a business license under this Chapter upon any of the grounds established for business license suspension or revocation as set forth in Section III-1-10.04.

(c) If there are no grounds for denial as set forth herein, upon the payment of the prescribed tax and fees, and upon compliance with all provisions of this Chapter, the license tax collector shall issue to such person a license which shall contain (1) the name of the person to whom the license is issued, (2) the business licensed, (3) the place where such business is to be transacted and carried on, (4) the date of the expiration of such license, and (5) such other reasonable conditions and information as may be necessary for the enforcement of the provisions of this Chapter.

SECTION 3. AMENDMENT OF MILPITAS MUNICIPAL CODE

The City hereby amends Section III-1-8.01 of Section 8 of Chapter 1 of Title III of the Municipal Code, to read as follows:

CHAPTER 1 – BUSINESS LICENSES

Section 8 – Affidavit Requirement

III-1-8.01 – Information Required

In all cases, the applicant for a license shall submit to the license tax collector a written statement, upon a form to be provided by the license tax collector, signed under penalty of perjury, or sworn to before a person authorized to administer oaths, setting forth such information concerning the applicant and the applicant's business as may be required by the said license tax collector, including, but not limited to:

- (a) Whether there is a final court order or administrative action of an investigatory agency (as specified in Section III-1-10.04(d)) which has been rendered against the applicant and which remains unsatisfied; and
- (b) Such information as will enable him or her to ascertain compliance with this Chapter and to secure the amount of the license tax to be paid by said applicant pursuant to this Chapter.

SECTION 4. AMENDMENT OF MILPITAS MUNICIPAL CODE

The City hereby amends Section III-1-10.04 of Section 10 of Chapter 1 of Title III of the Municipal Code, to read as follows:

CHAPTER 1 – BUSINESS LICENSES

Section 10– Additional Power of License Tax Collector

III-1-10.04 –Suspension or Revocation by License Tax Collector

Except where prohibited by State or Federal law, the license tax collector may suspend or revoke a business license for any of the following reasons:

- (a) That it was fraudulently or wrongfully issued or obtained, or

(b) That the information provided in the business license application was misleading or false in any material respect, or

(c) That the license holder is conducting a business upon premises located, maintained, used or operated in violation of any statute of the State of California or any ordinance of the City of Milpitas, or ordinance of any political subdivision of the State of California with jurisdiction over said premises or rule or regulation promulgated thereunder, or is conducting a business in violation of this or any other ordinance of the City of Milpitas or rule or regulation promulgated thereunder, or

(d) That the license holder has failed to comply with or to satisfy any final court order or administrative action of an investigatory agency finding a violation of applicable federal, state and local wage and hour laws, including but not limited to, the Federal Fair Labor Standards Act, the California Labor Code, and any local minimum wage ordinance or living and prevailing wage requirements. For purposes of this paragraph, a final court order or administrative action is one as to which there is either no pending appeal or the time for filing an appeal has passed and no appeal was filed.

(e) Prior to revoking or suspending a business license, the license tax collector shall give the license holder fifteen (15) calendar days written notice of intent to suspend or revoke such business license, including the basis for the suspension or revocation. Within said fifteen (15) calendar day period, the license holder may file a written request with the license tax collector requesting an opportunity to be heard as to why the business license should not be suspended or revoked. If no request is filed within said fifteen (15) calendar day period, the license tax collector's decision to suspend or revoke shall become final. If a request is timely filed, the license tax collector shall schedule a hearing at which the license holder may present evidence and at which the license tax collector shall consider whether or not the business license should be suspended or revoked. The hearing need not be public and may be continued for good cause. The license tax collector shall issue a written decision to the license holder not later than thirty (30) calendar days following close of the hearing. The license tax collector's decision may be appealed pursuant to Section III-1.14.01. If no appeal is timely filed, or, if after all appeals have been exhausted, the City finds good and sufficient cause for suspension or revocation, the business license shall be suspended or revoked as ordered. No refund of any business license taxes or fees shall be made following suspension or revocation.

SECTION 4. AMENDMENT OF MILPITAS MUNICIPAL CODE

The City hereby amends Section III-1-14.01 of Section 14 of Chapter 1 of Title III of the Municipal Code, to read as follows:

CHAPTER 1 – BUSINESS LICENSES

Section 14 – Appeals

III-1-14.01 – Right of appeal

Any person aggrieved by the decision of the license tax collector with respect to the issuance, denial, suspension or revocation of a license or the assessment of tax may appeal the decision to the City Manager, or his or her designee, by filing written notice of appeal with the City Clerk within twelve (12) calendar days of the date of the license tax collector's decision and by

paying the required appeal fee pursuant to Sections I-20-5.03 and I-20-5.05. This time limit will be strictly enforced. The notice of appeal shall contain the information specified in Section I-20-5.04

Within sixty (60) calendar days after an effective notice of appeal has been filed, the City Clerk shall cause a hearing to be set before the City Manager, or his or her designee. Notice shall be given to the appellant and the hearing shall be conducted in accordance with the procedures set forth in Title I, Chapter 20, Sections 2 and 3 of the Standard Procedures Chapter of the Milpitas Municipal Code, with the City Manager, or his or her designee, serving as the "hearing officer". The hearing need not be public. The Decision of the City Manager shall be final.

SECTION 5. SEVERABILITY

The provisions of this Ordinance are separable, and the invalidity of any phrase, clause, provision or part shall not affect the validity of the remainder.

SECTION 6. EFFECTIVE DATE AND POSTING

In accordance with Section 36937 of the Government Code of the State of California, this Ordinance shall take effect thirty (30) days from and after the date of its passage. The City Clerk of the City of Milpitas shall cause this Ordinance or a summary thereof to be published in accordance with Section 36933 of the Government Code of the State of California.